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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,256	09/20/2003	Shree K. Kurup	KURUP-3	6918

7590 03/13/2006
ROBERT NATHANS
36 STAG DRIVE
BILLERICA, MA 01821

EXAMINER

LEGESSE, NINI F

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/665,256

Applicant(s)

KURUP, SHREE K.

Examiner

Nini F. Legesse

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


NINI F. LEGESSE
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, and 13 are rejected under 35

U.S.C. 102(b) as being anticipated by Wargon (US Patent No. 5,949,514).

Regarding claims 1 – 3 and 6, Wargon discloses an eye patch (10), outer adhesive surface (18), and an inner adhesive surface portion (26) that is flexible sheet means.

Regarding claim 4, The Wargon device could comprise corrective lens (see column 3, lines 27+).

Regarding claim 5, this claim does not appear to further limit the invention.

Regarding claims 7 and 8, the device is templeless and strapless (see Fig. 1).

Regarding claims 9, 10, 12, and 13, during the normal use and operation of the Wargon device, the method steps as claimed would inherently be performed.

Claims 1, 2, 3, 6, 8, 9, 10, 12, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Craig (US Patent No. 4,122,847).

Regarding claims 1 – 3 and 6, Craig discloses an eye patch (10), outer adhesive surface (12), and an inner adhesive surface portion (31) that is flexible sheet means.

Regarding claim 8, the device is templeless and strapless (see Fig. 1).

Regarding claims 9, 12, and 13, during the normal use and operation of the Craig device, the method steps as claimed would inherently be performed.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 2, 3, 6, 9, 12, 15, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Bleau (US Patent No. 6,984,037).

Regarding claims 1 – 3 and 6, Bleau discloses an eye patch (10), outer adhesive surface (14), and an inner adhesive surface portion (see column 3, lines 30+) that is flexible sheet means.

Regarding claims 9, 12, 15, and 18, during the normal use and operation of the Bleau device, the method steps as claimed would inherently be performed. And the logo as shown on Fig. 1 for example, is considered as an affixed message.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 14, 16, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wargon in view of Bleau.

Regarding claims 16 and 19, Wargon discloses the invention as recited above but fails to disclose wherein a message is affixed to the device. However the use of indicia (message) on eyeglasses is not new in the art. Bleau is one reference that teaches that affixing message on an eyewear is nothing new (see Fig. 1). Thus it would have been obvious for one of ordinary skill in the art to affix a message on the Wargon device as taught by Bleau for advertisement purpose.

Regarding claims 11, 14, and 20, Wargon fails to disclose wherein the optical element comprises old corrective lens. However, it would have been obvious to one ordinary skill in the art at the time the invention was made to make use of old outdated prescription lens in order to reduce the manufacturing cost of the product.

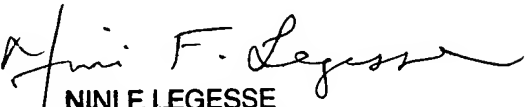
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nini F. Legesse whose telephone number is (571) 272-4412. The examiner can normally be reached on 9 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NFL
02/23/06


NINI F. LEGESSE
PRIMARY EXAMINER